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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ORALYN WASHINGTON, Plaintiff and Appellant, v. JOAHNNA CRUZ, Defendant and Respondent.	B289708 (Los Angeles County Super. Ct. No. BC605706)

APPEAL from a judgment of the Superior Court of Los Angeles County. Laura C. Ellison, Judge. Affirmed.

National Choice Lawyers and Koorosh K. Shahrokh for Plaintiff and Appellant.

Mark R. Weiner & Associates and Kathryn Albarian for Defendant and Respondent.

Plaintiff and appellant Oralyn Washington appeals from a judgment entered in favor of defendant and respondent Joahnna Cruz following a jury trial. Plaintiff argues: (1) The trial court erred when it did not allow certain cross-examination of defendant's medical expert; (2) The jury erred when it failed to award any damages to plaintiff; and (3) The trial court erred when it determined that defendant's memorandum of costs was timely served.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. *The accident*

This lawsuit arises out of a car accident that occurred on January 13, 2014. After defendant admitted to causing the accident, the case proceeded to trial on the issues of causation and damages only.

II. *Trial testimony*

A. Plaintiff's testimony

On September 14 or 15, 2013 (four months prior to the accident), plaintiff fell while walking in Hollywood. She fell with her left arm outstretched trying to stop herself from falling. She felt pain a day or so later, prompting her to see a doctor. Plaintiff told the doctor that she had fallen and her left shoulder was bothering her.

About two weeks after the fall, on September 27, 2013, plaintiff sought medical care at Northeast Valley Healthcare Center. At that time, she complained about the dull feeling in her arm and left shoulder. When she visited the doctor again on November 8, 2013, plaintiff complained of continuing left shoulder pain. Plaintiff was referred for physical therapy; she had her first physical therapy appointment on January 8, 2014,

five days before the accident. Because plaintiff was having left shoulder pain, a doctor also referred her for a left shoulder MRI after her fall (and before her first physical therapy evaluation), but it had not been scheduled by the time of the car accident.

Plaintiff had left shoulder pain ranging from four out of 10 to 10 out of 10 when she had her physical therapy evaluation on January 8, 2014.

After the accident, plaintiff drove to see friends in Long Beach, stayed a few hours, and then drove home to Sun Valley. She worked the day after the accident. She first saw a doctor two days after the accident.

On February 20, 2014, Dr. Maher Khan performed surgery on plaintiff's left shoulder. Plaintiff began treating with chiropractor Ramin Lavi on March 4, 2014. She did not tell either the chiropractor or the orthopedic surgeon that prior to the accident, another doctor had recommended that she undergo a left shoulder MRI.

B. Dr. Khan's testimony

Plaintiff first treated with Dr. Khan on January 27, 2014. He performed surgery to repair her labrum tear and slap tear, which he opined was an "acute" injury. By "acute," Dr. Khan meant "not more than six months old or three months old or something. It's within a certain criteria, maybe one or two months." Dr. Khan believed that, "more likely than not," the accident caused plaintiff's shoulder tear "because she was not in this significant pain prior to this accident." On cross-examination, Dr. Khan explained that his opinion was based on what plaintiff had told him; he was working with the information that she had provided, leading him to conclude that her injury was the result of the car accident.

Plaintiff did not tell Dr. Khan about the fall or prior left shoulder pain. She also did not tell him that she had been referred for a left shoulder MRI and physical therapy between the time of her fall and when he first saw her. She did not tell him that just 19 days before he first examined her, she had left shoulder pain at a level of six out of 10.

Dr. Khan also confirmed that during a visit with a different doctor on November 8, 2013, plaintiff had complained of left shoulder pain that had begun two months earlier.

Dr. Khan conceded that most labral tears are degenerative (caused by aging).

C. Dr. Lavi's testimony

Dr. Lavi did not know about plaintiff's September 2013 fall when he treated her. He first treated her on March 4, 2014, after she had undergone left shoulder surgery. She told Dr. Lavi that she had zero pain prior to the January 2014 accident. He was not aware that plaintiff had a physical therapy evaluation five days before the automobile accident, and he had no idea what her complaints were at that time.

D. Dr. Domenick Joseph Sisto's testimony

Dr. Sisto, the defendant's retained orthopedic surgeon, opined that the accident did not cause the labral tear in plaintiff's left shoulder. His opinion was based on plaintiff's medical records, indicating that she was being treated for a left shoulder injury prior to the car accident, that her main complaints in the emergency room two days after the accident were to her back and wrist, and the fact that where her car was hit in the accident did not usually cause this type of shoulder injury.

Dr. Sisto also testified that plaintiff had seen a physical therapist before the accident. At that time, plaintiff reported her

pain level as ranging from four to six out of 10. According to Dr. Sisto, that was consistent with chronic pain since her fall in September 2013.

E. Thomas Fugger's (Fugger) testimony

Fugger, defendant's accident biomechanical expert, testified that based upon the mechanics of the accident, he would not have expected any movement to the left shoulder.

III. *Judgment; plaintiff's challenges to the judgment*

The jury found that defendant's negligence was not a substantial factor in causing harm to plaintiff and rendered a verdict in defendant's favor. Judgment was entered on January 24, 2018, and the clerk served notice of entry of judgment on that same date. The notice did not indicate that it was served on order of the court or pursuant to Code of Civil Procedure section 664.5.

Plaintiff's posttrial motions for a new trial and to set aside or vacate the judgment were denied.

IV. *Memorandum of costs*

Defendant filed her memorandum of costs on February 5, 2018. The proof of service attached to the memorandum of costs, signed on February 2, 2018, mistakenly left blank the date of mailing. Consequently, on February 15, 2018, defendant filed a proof of service of memorandum of costs, confirming that defendant had served the document on plaintiff on February 2, 2018. Unfortunately, the proof of service filed February 15, 2018, did not have a proof of service attached to it. So, on February 20, 2018, defendant served a proof of service of the proof of service.

Plaintiff moved to invalidate service of defendant's memorandum of costs. After entertaining oral argument, the trial court denied that motion, finding that defendant had

established that the memorandum of costs had been served on February 2, 2018.

V. *Appeal*

Plaintiff timely appealed the judgment.

DISCUSSION

I. *The trial court did not err by refusing to allow plaintiff to cross-examine Dr. Sisto*

Plaintiff argues that the trial court erred by refusing to allow plaintiff to ask Dr. Sisto questions relating to reports prepared by Dr. Stephen L.G. Rothman.

A. Background

On January 29, 2014, plaintiff underwent an MRI scan of her left shoulder. Dr. Rothman, a board certified radiologist, prepared two reports regarding that MRI. Dr. Rothman's reports were forwarded to Dr. Sisto for his review.

According to plaintiff, Dr. Rothman reached a conclusion different than the one reached by Dr. Sisto, namely that plaintiff's shoulder injury could have been the result of the car accident. Thus, at trial, counsel sought to ask Dr. Sisto about Dr. Rothman's reports. The trial court instructed plaintiff to stop referring to Dr. Rothman's records, because, pursuant to *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*), the reports were hearsay as Dr. Rothman did not testify in the case.

B. Analysis

In their appellate briefs, the parties dispute whether *Sanchez* applies to this case and whether the trial court erred in relying upon *Sanchez* when it instructed plaintiff to stop referring to Dr. Rothman's records.

Sanchez clarified the hearsay rules governing experts—in civil as well as criminal cases—by prohibiting experts from

"relat[ing] as true case-specific facts asserted in hearsay documents, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*Sanchez, supra,* 63 Cal.4th at p. 686; *People v. Bona* (2017) 15 Cal.App.4th 511, 520 ["Although *Sanchez* is a criminal case, it also applies to civil cases"].) But *Sanchez* reaffirmed the long-standing rule that an "expert may still *rely* on hearsay in forming an opinion, and may tell the [trier of fact] *in general terms* that he did so." (*Sanchez*, *supra*, at p. 685.)

We need not determine whether the trial court erred by concluding, pursuant to *Sanchez*, that Dr. Rothman's reports constituted inadmissible hearsay and that plaintiff could not cross-examine Dr. Sisto with those reports. Even if the trial court erred by not allowing plaintiff to cross-examine Dr. Sisto with Dr. Rothman's reports, any error was harmless as a matter of law. (Cal. Const., art. VI, § 13; Cal. Code Civ. Proc., § 475.) In light of the overwhelming evidence that plaintiff suffered her shoulder injury before the car accident, that plaintiff was in significant pain before the car accident, and plaintiff's lack of truthfulness with her treating physicians after the accident, it is not probable that the jury would have reached a different result.

II. *The jury verdict is supported by substantial evidence*

Plaintiff argues that the jury erred by finding that plaintiff suffered no compensable injury in the accident.

A. Standard of review

It is well-established that we must uphold the judgment if it is supported by substantial evidence. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631 (*Howard*).) When determining whether substantial evidence supports the jury's verdict, we must "view all of the evidence in the light most

favorable to the judgment, drawing every reasonable inference and resolving every conflict to support the judgment." (*Jonkey v. Carignan Construction Co.* (2006) 139 Cal.App.4th 20, 24.) "'[I]f two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact.'" (*Ibid.*) After all, "[i]t is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment. Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact, ... We must accept as true all evidence and all reasonable inferences from the evidence tending to establish the correctness of the trial court's findings and decision, resolving every conflict in favor of the judgment. [Citations.]" (*Howard*, *supra*, 72 Cal.App.4th at pp. 630–631.)

Significantly, we do not evaluate the credibility of the witnesses. Rather, we defer to the trier of fact on issues of credibility. (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514–515.)

In sum, so long as there is "substantial evidence," contradicted or not, which supports the verdict, the appellate court must affirm the judgment even if the evidence could have supported a different result. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.)

B. Analysis

Applying the foregoing legal principles, we conclude that the jury verdict is amply supported by the evidence presented at trial. Plaintiff testified that she suffered a left shoulder injury prior to the accident. In fact, she had seen a doctor and was referred for an MRI and physical therapy to address her significant left shoulder pain. Moreover, plaintiff was not truthful about the onset of her left shoulder pain with either Dr. Khan or Dr. Lavi.

In addition, Dr. Sisto testified that plaintiff's left shoulder labral tear could have occurred at least four to six months prior to the car accident. And, Fugger testified that biomechanically, the accident would not have caused injury to plaintiff's left shoulder.

This evidence amply supports the jury verdict.

In urging us to reverse, plaintiff points to contrary evidence presented at trial. But, as set forth above, we do not reweigh the evidence. So long as the evidence supports the judgment, which it does here, we must affirm.

III. *Defendant timely filed and served her memorandum of costs*

Plaintiff contends that defendant is not entitled to recoup her costs because the proof of service of the memorandum of costs filed February 5, 2018, was not served until February 15, 2018, or eight days too late.

Regardless of whether the proof of service was timely filed and served to establish that the memorandum of costs was served on February 2, 2018, defendant is still entitled to recover her costs because she had until July 23, 2018 (180 days from entry of judgment), to file and serve her memorandum of costs.

California Rules of Court, rule 3.1700(a)(1) provides, in relevant part: "A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first."

Here, the trial court entered judgment on January 24, 2018. Neither party served notice of entry of judgment. Although the clerk served a document titled notice of entry of judgment, there is no indication in the appellate record that the trial court directed the clerk to give notice of entry of judgment or that the notice was given under Code of Civil Procedure section 664.5, subdivision (d). Thus, defendant had until July 23, 2018 (180 days from entry of judgment), to file and serve her memorandum of costs. (*Van Beurden Ins. Servs. v. Customized Worldwide Weather Ins. Agency* (1997) 15 Cal.4th 51, 64 ["when the clerk of the court mails a file-stamped copy of the judgment, it will shorten the time for ruling on [a motion] only when the order itself indicates that the court directed the clerk to mail 'notice of entry' of judgment"].)

As plaintiff concedes, defendant served her memorandum of costs by February 15, 2018, well within 180 days of the entry of judgment. Having timely served her memorandum of costs, defendant is entitled to recoup her costs awarded by the trial court.

DISPOSITION

The judgment is affirmed. Defendant is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ